Crl.A. 399/2001
BEFORE
HON'BLE MR. JUSTICE D.BISWAS
HON'BLE SMT. JUSTICE A.HAZARIKA

D.Biswas, J

The learned Sessions Judge, Jorhat on conclusion of trial in Sessions Case No. 71(J-J)/99 convicted the appellant Jatin Bora under Section 302 IPC and sentenced him to imprisonment for life and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for another one month. Being aggrieved thereby, the appellant has preferred this appeal on various grounds enumerated in the memorandum of appeal.

2. P.W.1 Jagat Saikia lodged an ejahar before the Officer-in-Charge, Jengraimukh Police Station on 27.2.99 alleging that on the previous day around 4 p.m. residents of their village, namely, Sri Jatin Bora, Sri Bipul Bora, Sri Jan Saikia, Sri Biswa Bora and Smt. Dipali Saikia came to the compound of his house. They started altercation with them over a tube-well and caused death of his brother Pramod Saikia by inflicting injuries on his head and person by slapping him and assaulting him with lathi.

3. On receipt of the aforesaid ejahar, Jengraimukh P.S. Case No.4/99 under Section 302/34 IPC was registered. The police after registration of the case took up investigation, visited the place of occurrence, prepared the inquest report, recorded the statement of the witnesses and forwarded the dead body for post mortem examination. On completion of investigation, chargesheet was filed against accused Jatin Bora, Bipul Bora, Jan Saikia and Dipali Saikia under Section 302/34 IPC for causing death of Promod Ch. Saikia intentionally.

4. On commitment by the learned Magistrate, the learned Sessions Judge framed charge against the aforesaid four accused persons under Section 302/34 IPC. The charges were read over and explained to the accused persons, to which they pleaded not guilty and claimed to be tried. Eventually, on conclusion of trial, the learned Sessions Judge acquitted accused Bipul Bora, Jan Saikia and Dipali Saikia of the charge under Section 302/34 IPC and convicted the appellant Jatin Bora as aforesaid.

5. The learned Sessions Judge examined seven witnesses produced by the prosecution. The defence did not adduce any evidence. After examination of the accused-appellant under Section 313 CrPC and hearing the argument, the impugned judgment was pronounced convicting and sentencing the appellant as mentioned hereinbeore.

6. P.W.5 Dr. Pabitra Mili performed the post mortem examination on the dead body of Promod Saikia. The injuries found on the dead body are as follows :-

External Appearance

A male dead body Rigor mortis present aged about 30 years. Face is pale. Eyes and mouth are closed. Lacerated Wound 5 X 2 is present at the right side of the temporal part of the skull. Lacerated was over left side of the chest.

Skull

Scalp is depressed an communated fracture size 4 c.m. x 3 c.m. at right parietal bone.

Membrane

Lacerated & haemorrhage.

Brain & Spinal Cord

Brain matter of the left parital region is haemorrhaged. Other organs are almost normal. Injuries were ante mortem in nature.

In the opinion of the doctor, the death was due to shock and haemorrhage resulting from the head injury due to fracture of the scalp. The doctor further opined that the injuries were caused by heavy blunt object (lathi). According to the doctor, the injuries found on the head were sufficient to cause death in the ordinary course of nature.

7. The evidence of the Medical Officer read with the inquest report (Exhibit-3) conclusively prove that Promod Saikia died of the injuries caused on his head .

8. Mr. P Bora, learned counsel for the appellant did not challenge the prosecution allegation of quarrel over a tube-well and the assault made by the appellant Jatin Bora on the person of the deceased Promod Saikia. The learned counsel argued that the evidence on record disclose that the dispute started over a Government tube-well and its removal and in the process the appellant struck a blow on the head of Promod Saikia. Only a single blow was dealt with by the appellant without any intention to cause the death of Promod Saikia. Therefore, the case at hand may at best be a case for conviction under Section 304, Part-II IPC. Mr Mazumdar, learned Public Prosecutor, however, defended the judgment of conviction and sentence.

9. We have examined the evidence on record. P.W.1 Jogot Saikia is the brother of the deceased. He is not an eye witness to the occurrence. He was informed about the occurrence by a small boy. He came to the place of occurrence and found his brother lying in an unconscious state with injury on his head. He saw the accused-appellant going away with a lathi in his hand. From the evidence of P.W.2 Robin Bora, we find that he was engaged by one Dadhiram Bora and Promod Saikia (deceased) to dig out one Government tube-well from the roadside and to install it in the premises of Dadhiram Bora. After some time the appellant along with others came in a body and demanded a portion of the tube-well. Promod Saikia obstructed them and in the process appellant Jatin Bora assaulted him on his head. P.W.3 Konok Saikia stated that after removal the tube-well was installed in front of the house of the deceased. P.W.6 Smt. Potoli Saikia is the wife of the deceased. She also indicted Jatin Bora as the assailant of her husband. She stated that appellant Jatin Bora objected to the installation of the tube-well and demanded a part of the pipe. Her husband opposed and there was a tussle between them. Her husband resisted Jatin Bora from taking away the pipe. Thereafter, Jatin assaulted him with a stick. P.W.7 Chandra Bora is not an eye witness to the occurrence. He is a signatory to the seizure list, Exhibit-4.

10. The evidence of the witnesses discussed above clearly show that the deceased along with one Dadhiram dig out a Government tube-well and wanted to install it near his house. This led to a dispute between the deceased and the appellant followed by a tussle and in the process the appellant dealt with a single blow on the head of the deceased with a lathi. From the facts and circumstances, it is apparent that the appellant was to some extent provoked for unlawful removal of the Government tube-well by the deceased and others. His demand for a share of the pipe was also not acceded to. There was a tussle between the appellant and the deceased and in the process, he dealt with a lathi blow on the head

of the deceased in a hit of passion. Therefore, it cannot be said that he had the intention to kill Promod Saikia. The occurrence took place in a hit of passion while the appellant was in a provoked state of mind. That apart, Promod Saikia died at a later stage. He was taken to a doctor at Naya Bazar and treated there. Promod Saikia was in a position to speak. He also named the appellant as his assailant. Promod was brought back home after treatment and later on he died. This further shows that adequate medical treatment was not made available to the deceased. Perhaps, with adequate medical treatment, the life of the deceased could have been saved.

11. In view of the above discussion, we are of the opinion that the appellant had no intention to eliminate Promod Saikia. He had assaulted him in a hit of passion. He had, however, the knowledge that by assaulting Promod with a lathi on his head, he was likely to cause his death. Therefore, in our opinion, a case for conviction under Section 304, Part-II IPC has been made out by the prosecution in the instant case.

12. Consequently, we modify the impugned judgment, convict the appellant under Section 304, Part-II IPC and sentence him to rigorous imprisonment for five years.

13. The appeal accordingly stands disposed of.